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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,452	04/20/2006	Roland V Hornstein	HERM-1-1001	9933
25315 7590 10/31/2008 BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104				
EXAMINER				
LOPEZ, FRANK D				
ART UNIT		PAPER NUMBER		
3745				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,452

Applicant(s)

VHORNSTEIN, ROLAND

Examiner

F. Daniel Lopez

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 13-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 13, 15, 17, 18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) 14 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

Applicant's arguments filed July 28, 2008, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 13, 15, 17, 18, 20 and 21 have been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by the added limitations that

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pressure accumulator and pressure generator, as alternatives, connected to the discharged air (claim 21) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

Claims 13, 15, 17, 18 and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Riddle et al in view of Banning. Riddle et al discloses a lifting device comprising 2 hydraulically operated lifting units (21, 22), including a piston in a cylinder tube connected by a mechanical traverse support (1, 2) and a mechanical anti-lowering means (13, equivalent to the disclosed means); wherein air is supplied to a hydraulic reservoir (15), which causes hydraulic fluid to be supplied to the lifting units; but does not disclose that the lifting units include a stationary hollow plunger piston is supported at a base and has a cavity, receiving hydraulic fluid and a tube, which extends from near a first end to a second end of the piston; wherein the piston tube includes an opening near the second end and receives compressed air; that a surface of the hydraulic fluid in the piston in a retracted state is near the opening of the piston tube; that hydraulic fluid flows between the cavities of the piston and the cavities of the cylinder tubes; or that there is an internal seal at a lower end of the cylinder tubes.

Thompson teaches, for a lifting device comprising a hydraulically operated lifting unit (21, 22), including a piston in a cylinder; that the lifting unit includes a stationary hollow plunger piston (17, 22) having a cavity, receiving hydraulic fluid, supported at a base, and a tube (105) within the cavity extending from a point near a first end to a second end of the piston; wherein the piston tube includes an opening near the second end and receives compressed air; that a surface of the hydraulic fluid in the pistons in a retracted state is near the opening of the piston tube near the second end (e.g. fig 4); that hydraulic fluid flows between the piston cavity of the and the cylinder tube cavity (via 72); and that there is an internal seal at a lower end of the cylinder tube.

Since the lifting units of Riddle et al and Thompson are interchangeable in the lifting device art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to make the lifting units of Riddle et al include a stationary hollow plunger piston having a cavity, receiving hydraulic fluid, supported at a base, wherein a tube within the cavity extends from a point near a first end to a second end of the piston; wherein the piston tube includes an opening near the second end and receives compressed air; wherein a surface of the hydraulic fluid in the pistons in a

retracted state is near the opening of the piston tube near the second end; with an internal seal at a lower end of the cylinder tubes, and that hydraulic fluid flows between the pistons' cavities and the cylinder tubes' cavities, as taught by Thompson, since one having ordinary skill in the art would have been able to carry out such a substitution and the resulting combination would predictable work in the same manner.

Claim 21 is rejected under 35 U.S.C. § 103 as being unpatentable over Riddle et al in view of Thompson as applied to claim 13 above, and further in view of Makaroff. The modified Riddle et al discloses all of the elements of claim 21; but does not disclose that pressurized discharged air is at least one of partially sent to a pneumatic accumulator or sent to a pressure generator.

Makaroff teaches, for a lifting device comprising a lifting unit (25), including a piston in a cylinder tube, wherein air is supplied to a hydraulic reservoir (10), which causes hydraulic fluid to be supplied to the lifting units; that pressurized discharged air is at least partially sent to a pneumatic accumulator (3) and then sent to a pressure generator (5), for the purpose of decreasing power consumption (e.g. page 2 column 1 line 1-5).

Since Riddle et al and Makaroff are both from the same field of endeavor, the purpose disclosed by Makaroff would have been recognized in the pertinent art of Riddle et al. It would have been obvious at the time the invention was made to one having ordinary skill in the art to at least partially send pressurized discharged air of the modified Riddle et al to a pneumatic accumulator and then to a pressure generator, as taught by Makaroff, for the purpose of decreasing power consumption.

Conclusion

Claims 14 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Thompson shows first (106) and second (81) openings at the first end of the plunger pistons, to receive an air tube (104) and allow a flow of hydraulic fluid, respectively; but does not show the first opening for receiving compressed air into the tube.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
November 1, 2008